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FILED
OCT 23 1975
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-164

PASADENA CITY BOARD OF EDUCATION, ET AL.,
Petitioners,

vs.

NANCY ANNE SPANGLER, ET AL.,
Respondents,

and

UNITED STATES OF AMERICA,
Respondent.

MEMORANDUM OF PETITIONERS IN REPLY TO BRIEFS AND MEMORANDUM IN OPPOSITION TO PETITION FOR CERTIORARI AND TO SUGGESTION OF MOOTNESS.

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In response to the memorandum and briefs of the respondents, petitioners ask the Court to consider these few salient and dispositive propositions:

PETITION FOR CERTIORARI.

1. The sole reason for the trial court to find non-compliance in this case was the failure of petitioners to afford continuous annual redistricting to meet the ratios established by the original

decree. (Plaintiffs-respondents also suggest that the petitioners' pronouncements of their opposition to busing is also a violation. But it stretches the lower court's action too far to accept the proposition that the petitioners' exercise of their First Amendment rights is a valid basis for holding them in noncompliance with the desegregation decree.)

2. There was neither any way nor any reason for petitioners to have raised the issue of the requirement of a continuous annual redistricting on an appeal from the original judgment. Yet the argument is proferred by respondents that the failure to raise the question on appeal from the original judgment forecloses petitioners' rights on this appeal. The original judgment did not, by its terms, impose any requirement of continuous annual redistricting. That is why, in February, 1974, all parties hereto stipulated, though they all knew of the failure of annual redistricting to meet the quota, that petitioners had not committed any violations of the original decree.

3. This "Catch-22" formula is invoked by respondents in different terms at different parts of their briefs and memoranda.

The Government says that the rigid ratios, which the Court of Appeals below affirmed, were "prospectively eliminated by the court of appeals, which 'expressly disapprov[ed] such portions of the record as suggest that the district judge interprets his injunction to require continuous annual redistricting.' " The fact remains that the order of the trial court refusing to relieve petitioners of the obligation for annual redistricting was the order that was affirmed by the Court of Appeals, in spite of the language quoted by the Government, and the failure to maintain that "continuous annual redistricting" was the reason given by the Court of Appeals and the respondents for the failure of petitioners to have achieved desegregation. We respectfully submit that neither the respondents nor the lower court is entitled to have it both ways. Either there is a continuing annual redistricting requirement, which we contend and the Government all but concedes is invalid, in which case this Court should

review the judgment below, or there is no such requirement, in which case petitioners should be relieved of the judgment below.

4. Respondents, by the use of conclusory statements, attempt to evade the important issues that are raised here. They say that petitioners have not conformed with the requirements of desegregation. But there is no evidence to show the continuance of segregation, except the failure to maintain the "continuous annual redistricting," which they say in another paragraph, is not required.

5. So, too, they label the petitioner's Alternative Plan—which was nothing more than a proposed alternative plan on which they asked the right of a hearing that was denied them—as a "freedom of choice" plan, which they say is implicitly invalid. The facts that the plan is not a "freedom of choice" plan, as may be seen from a quick reading of the proposal, and that a "freedom of choice" plan is not inherently invalid, are not rebutted but ignored.

MOOTNESS.

1. It is clear from the record that, so far as the respondents-plaintiffs are concerned, the case is moot and the judgment should be vacated. Nothing is shown to establish, so far as they are concerned, any distinction from the decision of this Court in *Board of School Commissioners of Indianapolis* v. *Jacobs*, 420 U. S. 128 (1975).

2. Conceding the proposition that the Government as intervenor is "entitled to the same relief as if it had instituted the action" (Memorandum for the United States in Opposition, p. 9, n. 4), we still suggest the existence of mootness. The Government intervention at the trial court level was to effect relief for the plaintiffs and "those similarly situated." In sum, the ancillary intervention was in support of the claims of those whose interest in the outcome of the lawsuit has been dissipated by their gradua-

tion. The graduation of plaintiffs and those similarly situated—in the absence of a definition of a larger class—thus mooted not only plaintiff's claims but those of the intervenor as well.

Respectfully submitted,

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